

VOLUNTEER MARITIME RESCUERS: AWARENESS OF CRIMINALISATION

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HUMAN RIGHTS AT SEA



FOREWORD

The International Maritime Rescue Federation is delighted to endorse the excellent guidance provided in this document by Human Rights at Sea. We are fully supportive of the information provided and believe this will be of great assistance to volunteer maritime rescuers, both now and in the future, as they venture out to help prevent loss of life.

The need for this resource has been highlighted by the recent events in the Mediterranean, where many NGOs have responded to the call to help bolster the local maritime search and rescue (SAR) capability for rescuing people in distress. Many of these groups not only found themselves being confronted by the difficulty of interpreting local authorities' rules and conventions but also had to contend with cross-border issues that they would not have encountered in their home territories.

The guidance provided in this document will be an invaluable resource for current and future rescuers, helping them to minimise the risk of their humanitarian actions being in conflict with the laws and regulations that govern rescue at sea.

The IMRF is an international charity with consultative status at the International Maritime Organization (IMO), the United Nations' specialised agency with responsibility for the safety and security of shipping. We represent the world's maritime SAR community, bringing SAR organisations of all kinds together in one growing family and working cooperatively to improve global SAR by sharing ideas, technologies and lessons learned.

IMRF member organisations may be large or small; newly-formed or long-established; charities, private or public agencies, or supporting organisations and industries. Together, our members are involved in maritime SAR throughout the world. We seek to develop or improve SAR capability. We work with the operators of surface and air SAR units, as well as SAR coordinators and those in support of these functions; and many of our members are also involved in accident prevention strategies. The common thread in all of our work is the fundamental humanitarian aim of preventing loss of life in the world's waters.

We also have responsibility to guide and advise our members on how to manage the risks associated with maritime rescue. With a number of our NGO members from around Europe operating rescue boats with volunteer crew in the Mediterranean it is important that they understand and recognise the varying interpretations and possible application of the rules and legislation where they are working. This publication provides a very good overview of the relevant EU legislation, and International Maritime Law obligations that rescuers will need to be aware of.

The only competition SAR organisations should face in maritime rescue is with the elements. We at the IMRF believe that cooperation, locally, nationally and internationally, is the key to preventing loss of life in the world's waters. We are grateful to the team at Human Rights at Sea for developing this guidance and making it freely available to all rescuers.

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1 INTRODUCTION

1.1 ABSTRACT

Recent European media reporting has suggested that volunteer maritime rescuers assisting in the humanitarian rescue of persons in distress at sea resulting from mixed migration in the Mediterranean region may be criminalised for their actions in terms of being subject to existing European legislation previously established to combat people smuggling. The actions of such individuals and related humanitarian organisations are entirely separate to those persons who knowingly act unlawfully in relation to the smuggling of persons between States invariably for financial gain and thereby commit an offence of ‘facilitation of unauthorised entry, transit and residence’¹. Volunteer maritime rescuers working at sea in small vessels, or watercrafts², as well as civil society in general seek greater awareness about the applicable legal and policy issues. This awareness is to better inform the position of humanitarian organisations, associated volunteers and those who support them in order to lawfully avoid the potential criminalisation of their actions.

“appropriate criminal sanctions are in place while avoiding the risks of criminalising those who provide humanitarian assistance to migrants in distress”.

Unfortunately, the EU Action Plan is at odds with the 2000 UN Protocol against the Smuggling of Migrants by Land, Sea and Air (the UN Smuggling Protocol)⁵ which itself does not provide such an explicit exemption of punishment for those providing humanitarian assistance.⁶ As a result, there is a degree of confusion about what legislation applies and which guidance should be followed.

In the maritime environment where immediate responses are often crucial to saving life there is a growing fear that trepidation to act decisively is already costing lives.⁷ This is principally focused on the actions of civil society volunteer maritime rescuers operating at sea from vessels^{8,9} both within, and external to a coastal State’s Territorial Waters (TTWs).



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1.2 BACKGROUND

As a general principle of international law, a State’s sovereignty allows that State to control its borders, to exclude aliens from its territory and to prescribe laws governing the entry of aliens into its territory.

Ongoing events within Europe have thrown into sharp focus the tension between Member States’ legislation prohibiting illegal immigration resulting from increased levels of irregular migration due to regional instability and the established obligation to assist people in distress at sea.

This conflict of obligations is particularly troubling as both volunteers and civil society organisations are reporting that they fear criminal sanctions when assisting mixed (regular and irregular) migrants. This is having a deterrent effect on their work³ despite the consideration of the 2015 European Union (EU) Action Plan⁴ against migrant smuggling in which the European Commission stated that it would ensure that:

Vessels working in and around the coastal areas of the EU find themselves **under two conflicting duties**.

First, there is the application of EU legislation designed to combat the smuggling of human beings¹⁰ which prohibits helping irregular from entering the EU.

Second, there is the application of established national and international laws combined with what can be referred to as ‘customary maritime ethics’ which requires the rendering of assistance to anyone who is in distress at sea¹¹.

Much of this ground concerning the first duty is untested¹², while the new 2016 European Parliament **Directorate-General for Internal Policies report**¹³ now recognises four key recommendations for EU legal framework reform, including human rights safeguard provisions. Furthermore, there is a deficit of supporting data reflecting how current anti-smuggling legislation is being implemented in practice between EU Member States.



Meanwhile, despite genuine concerns about the potential criminalisation of volunteer maritime rescuer's actions undertaken daily in order to save life, international maritime law is clear as to provisions for flagged vessels. All registered ships are required ("Every State shall require the master of a ship flying its flag..."), to render assistance to anyone found in distress at sea, as far as is possible without endangering their own vessel or passengers.

This duty applies to anyone in charge of a ship at sea, regardless of international maritime borders, whether the Master of that vessel is a certified maritime professional, or a civil society volunteer working as part of a team in EU coastal waters supporting Search and Rescue (SAR) operations.

1.3 OBJECTIVE

The objective of this Human Rights at Sea Briefing Document is to examine the current EU legislation which volunteer maritime rescuers have expressed concerns and reservations about in terms of appearing to criminalise their humanitarian work, before reviewing the duties that apply to all Masters. It will also highlight the international obligations that require States to support SAR operations within their maritime areas of responsibility, or otherwise to render assistance from vessels flying their flag as obligated by international law.

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1.5 DISCLAIMER

The views and opinions expressed in this publication are the sole responsibility of the author. This Human Rights at Sea Briefing Document should not be taken or quoted as either formal, or informal legal advice, in anyway whatsoever. Interested parties who are seeking to enter, or are currently working in the maritime humanitarian sector, must seek independent legal advice as necessary.

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¹ Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence.

² Including Rigid Inflatable Boats (RIBs).

³ European Parliament Citizens' Rights and Constitutional Affairs, 'Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants', (2016)

⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0285&from=EN>

⁵ 'PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, SEA AND AIR, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME' https://www.unodc.org/documents/southeastasiaandpacific/2011/04/som-indonesia/convention_smug_eng.pdf

⁶ Article 6 "Criminalisation".

⁷ <http://www.independent.co.uk/news/world/europe/rescuers-unable-to-help-31-refugees-who-drowned-because-they-feared-being-charged-with-people-a6834056.html>

⁸ The words 'vessels' and 'ships' are interchangeably used in this publication. The intent is to reflect equality of action in the rescuing of persons in distress by either 'vessels' or 'ships' and includes all watercraft such as Rigid Inflatable Boats (RIBs).

⁹ UN Smuggling Protocol (2000) defines: "Vessel" shall mean any type of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service.

¹⁰ EU Facilitation Directive (Directive 2002/90/EC)51 and its accompanying Framework Decision 2002/946/JHA52

¹¹ Article 98, Paragraph 1, UN Convention on the Law of the Sea (UNCLOS) 1982.

¹² UNODC – United Nations Office on Drugs and Crime, Toolkit to Combat Smuggling of Migrants - Tool 8 Protection and Assistance Measures, 2010.

¹³ The Directorate-General for Internal Policies, Policy Department, Fit for Purpose? The Facilitation Directive and the Criminalisation of Humanitarian Assistance to Irregular Migrants, 2016. [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536490/IPOL_STU\(2016\)536490_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536490/IPOL_STU(2016)536490_EN.pdf).

2 EU LEGISLATION

2.1 THE EU FACILITATION DIRECTIVE AND ACCOMPANYING FRAMEWORK DECISION

In this matter, the relevant EU legislation is the 2002 EU Facilitation Directive¹⁴ (“the Facilitation Directive”) and the accompanying Framework Decision¹⁵ (“the Framework Decision”) are together referred to as the ‘Facilitators’ Package’. This legislation was established by the EU in 2002 to help combat illegal immigration and by direct association, people smuggling.

Article 1 of the Facilitation Directive states:

1. Each Member State shall adopt appropriate sanctions on:

(a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens¹⁶; ...

2. Any Member State may decide not to impose sanctions with regard to the behaviour defined in paragraph 1(a) by applying its national law and practice for cases where the aim of the behaviour is to provide humanitarian assistance to the person concerned.

For the reader it is important to note that Section 1 of this Article requires EU Member States to criminalise the assisting of non-EU citizens to enter the EU illegally as a breach of law. Section 2 of this Article nonetheless includes an option for Member States to not impose sanctions if their assistance was for **humanitarian reasons**.

However, and as noted by the **EU Directorate-General for Internal Policies**¹⁷, it leaves the nature and scope of precisely what ‘humanitarian assistance’ includes, undefined. This can provide readers with both latitude and confusion in lawful interpretation.

2.2 LEGAL APPLICATION

In general, an EU Directive is not automatically legally binding. Instead, EU Member States are required to create their own national legislation to give legal effect to the Directive. This requires interpretation which is often shaped by individual Member State’s national policies. In this matter leaving the term ‘humanitarian assistance’ undefined gives a considerable amount of discretion to Member States to decide on the extent of the conduct that they determine to be illegal.

2.3 SO WHAT?

This means that while the EU Facilitation Directive does not encourage Member States to expressly punish volunteer maritime rescuers who rescue mixed migrants at sea, equally it does not explicitly exclude them from punishment either.

In theory, a Member State who criminally punishes someone for rescuing migrants at sea and who brings them into the EU, would be acting compatibly with the Facilitation Directive. Unfortunately, the risk of humanitarian volunteers being potentially criminalised has been heightened

by national legislation of individual Member States bringing this EU legislation into effect.

In 24 EU Member States facilitating irregular entry can be punished, though only four states (Germany, Ireland, Luxembourg and Portugal) have an explicit requirement that the facilitation is to be for profit or financial gain¹⁸.

Unfortunately, in many Member States the **safeguard** that punishment should not be imposed when the action was for **humanitarian reasons** has not been reflected in the national legislation. Only eight Member States have explicitly included exceptions for humanitarian assistance, although more have included a reference to the general **criminal law defence of necessity**.

2.4 EU AND DOMESTIC SAFEGUARDS TO PROTECT VOLUNTEER MARITIME RESCUERS

Despite the Facilitation Directive there are other potential safeguards that may protect volunteer maritime rescuers. These include safeguards within the implementing legislation itself (that is the legislation EU Member States have to create in order to enforce the provisions of the Directive), applicable international Human Rights Conventions and an individual State’s criminal law.

2.5 IMPLEMENTING LEGISLATION

Some Member States have included safeguards in their implementing legislation¹⁹. As the Fundamental Rights Agency (FRA) notes, Greece, for example, has a specific exception for the rescue of persons at sea, and several other States include similar safeguards²⁰.

While there is very little evidence about how this law is being used in practice, the prosecutions that have been published tend to involve individuals helping family members, rather than providing humanitarian aid at sea. For example the English case of *Sternaj* where a man was convicted of facilitating irregular immigration for passing off of his passport as belonging to his nephew²¹.

Meanwhile, there are clearly policy decisions behind allowing a broad defence of humanitarian assistance, and so the lack of an explicit defence within implementing legislation should not be read as meaning that there is a specific and explicit attempt to criminalise maritime humanitarian rescuers.

2.6 INTERNATIONAL HUMAN RIGHTS

International Human Rights Conventions supply a source of protection for both voluntary maritime rescuers and mixed migrants in need of assistance. For example, the non-derogable human right to life must be upheld at all times, whatever the situation.

In EU Member States where there is no specific defence to facilitating the immigration of irregular migrants, the duty to protect the human rights of those involved will fall to the domestic courts. The European



Convention of Human Rights (ECHR)²² and the Universal Declaration of Human Rights (UDHR)²³ both contain rights that are applicable to mixed migrants regardless of their immigration status²⁴.

While this area of legal practice is relatively untested, it seems possible that criminalising the maritime rescue of migrants in distress at sea would be a violation of the right to life of the migrants. While by no means certain, the possibility has been noted by a number of commentators²⁵.

2.7 DOMESTIC LAWS

A large number of Member States include provisions in their domestic criminal legislation that would act as a defence. For example, the defence of necessity in English Law, which requires an urgent and immediate threat to life that makes it proportionate to break the law in response²⁶. Civil law legal systems often go further, criminalising anyone who deliberately fails to provide assistance to a person in danger.

Perhaps the most famous of these provisions is the French law of 'non-assistance à personne en danger', which is punishable by up to five years in prison and a fine of up to 70,000 Euros. Meanwhile, several Member States with long maritime histories including Germany, Norway and the United Kingdom also have specific offences for maritime situations, making it a criminal offence to fail to give assistance to those in distress at sea²⁷.

2.8 SUMMARY

- While EU legislation may appear to generate a set of conflicting rights and obligations, when viewed in conjunction with international human rights obligations and domestic legislation, the position becomes far more supportive to volunteer maritime rescuers particularly in the case of undertaking dedicated humanitarian operations for saving life at sea.
- Some current case law appears to point to legislation being used to prevent individuals from illegally bringing family members into Europe and which appears distinct from humanitarian rescue at sea.
- Even if Member States were attempting to prosecute volunteer maritime rescuers, they may well be restricted by their international human rights obligations such as the right to life. This would need to be raised as a defence to any such charge.
- Some Member States offer a defence of necessity for rescue operations at sea. Indeed, States may well prosecute individuals who fail to offer assistance to people in distress at sea at first instance.
- As irregular migration continues in and around Europe in 2016, the legal and policy situation remains fluid. Individual Member States may take conflicting positions reflecting national priorities and existing legislation may be further amended.



¹⁴ EU, *Directive 2002/90/EC*.

¹⁵ EU, *Decision 2002/946/JHA*.

¹⁶ Facilitation Directive, Article 1.

¹⁷ The Directorate-General for Internal Policies, Policy Department, *Fit for Purpose? The Facilitation Directive and the Criminalisation of Humanitarian Assistance to Irregular Migrants*, 2016. [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536490/IPOL_STU\(2016\)536490_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536490/IPOL_STU(2016)536490_EN.pdf).

¹⁸ European Agency for Fundamental Rights FRA, 'Criminalisation of Migrants in an Irregular Situation and of Persons Engaging with Them', 2014 <http://fra.europa.eu/sites/default/files/fra-2014-criminalisation-of-migrants-0_en_0.pdf>.

¹⁹ Fundamental Rights Agency.

²⁰ Greece, Finland, Austria, Belgium, Spain, Lithuania, UK and Ireland all have exceptions in their implementing legislation.

²¹ *Sternaj and Sternaj v. the Crown Prosecution Service* [2011] EWHC 1094.

²² European Human Rights Convention. http://www.echr.coe.int/Documents/Convention_ENG.pdf

²³ The Universal Declaration of Human Rights. <http://www.un.org/en/universal-declaration-human-rights/>

²⁴ See the 'Platform for International Cooperation on Undocumented Migrants (PICUM)', "Undocumented Migrants Have Rights! An Overview of the International Human Rights Framework", 2007 for more information on how Human Rights apply to migrants..

²⁵ The Directorate-General for Internal Policies, Policy Department.

²⁶ *Southwark London Borough Council v Williams* (1971) 2 AER 175.

²⁷ Kathleen Newland, 'Troubled Waters: Rescue of Asylum Seekers and Refugees at Sea', Migration Policy Institute, 2003. <http://www.migrationpolicy.org/article/troubled-waters-rescue-asylum-seekers-and-refugees-sea>

3 OBLIGATIONS UNDER INTERNATIONAL MARITIME LAW

THE FOLLOWING OUTLINES KEY INTERNATIONAL OBLIGATIONS APPLICABLE TO THE RESCUE OF PERSONS AT SEA.

3.1 THE DUTY TO RENDER ASSISTANCE TO THOSE IN DISTRESS

A shipmaster's obligation to render assistance at sea is a long standing maritime tradition. It is an obligation that is recognized by international law. The United Nations Convention on the Law of the Sea (UNCLOS) 1982 codifies the obligation that a State must require the master of a ship flying its flag to give assistance to people and ships in distress at sea. This duty is set out as follows:

Article 98: Duty to render assistance²⁸



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1. Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:

- (a) to render assistance to any person found at sea in danger of being lost;
- (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him;
- (c) after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call.

For the current matter, this duty requires all ships at sea to attempt to rescue people in distress if it is reasonably safe for them to do so.

Crucially, the obligation applies to the **masters** of ships without qualification. They may not discriminate due to the legal status of the persons in distress, and are only limited by the extent that offering assistance would be unreasonable²⁹.

The question of whether persons are 'in distress' is phrased in an intuitive manner. The 1979 International Convention on Maritime Search and Rescue states that there must be "a reasonable certainty that [they are] threatened by grave and imminent danger"³⁰. This is a deliberately wide definition that leaves Masters to make their own decision about whether their assistance is needed on a case-by-case basis.

This interpretation of the obligation on all ships at sea was recently reiterated by the International Maritime Rescue Federation (IMRF), which was keen to emphasise that the duty to assist those in danger applies regardless of territorial or international waters, or the status of the people involved³¹.

3.2 OBLIGATIONS UNDER THE SEARCH AND RESCUE CONVENTION

The 1979 International Convention on Maritime Search and Rescue³² (the "SAR Convention"), required States to establish the basic elements of a search and rescue ("SAR") service **within their sea area**³³ and to assist in the rescue of distressed persons "...and, when necessary, by co-operation between neighbouring SAR organizations"³⁴. This includes enabling vessels to land rescued people at a place of safety³⁵.

²⁸ http://www.un.org/depts/los/convention_agreements/texts/unclos/part7.htm

²⁹ Efthymios Papastavridis, "Rescuing 'Boat People' in the Mediterranean Sea: The Responsibility of States under the Law of the Sea", 31 May 2011. <http://www.ejiltalk.org/rescuing-boat-people-in-the-mediterranean-sea-the-responsibility-of-states-under-the-law-of-the-sea/>

³⁰ 1.7, Chapter 1, International Convention on Maritime Search and Rescue. <https://treaties.un.org/doc/Publication/UNTS/Volume%201405/volume-1405-I-23489-English.pdf>

³¹ International Maritime Rescue Federation, 'Migrant Rescue at Sea: The Legal Context', 2016 <http://international-maritime-rescue.org/10-news/1887-migrant-rescue-at-sea-the-legal-context>

³² <https://treaties.un.org/doc/Publication/UNTS/Volume%201405/volume-1405-I-23489-English.pdf>



Chapter 1: *Terms and Definitions*

1.3.2 Rescue. An operation to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety.

SAR services are defined as:

“the performance of distress monitoring, communication, coordination and search and rescue functions, including provision of medical advice, initial medical assistance, or medical evacuation through the use of public and private resources including co-operating aircraft, vessels and other craft and installations.”

A ‘place of safety’ is defined in the Annex to the SAR Convention³⁹. It **must be** somewhere the lives of the rescued persons are no longer in danger, and where their basic needs can be met. It is also a place where the survivors’ safety of life is no longer threatened and where their basic human needs (such as food, shelter and medical needs) can be met. Further, it is a place from which transportation arrangements can be made for the survivors’ next or final destination. Once the rescuing ship has reached the designated place of safety, rescue operations are deemed to be over.

Paragraph 1-1 of SOLAS regulation V/33 and paragraph 3.1.9 of the Annex to the International Convention on Maritime Search and Rescue,



By virtue of the obligation, the International Maritime Organisation (IMO) (the specialised agency of the United Nations responsible for the global standard-setting for the safety, security and environmental performance of international shipping) recommends that anyone involved in SAR at sea should report to the nearest Rescue Coordination Centre, which will offer them assistance as needed³⁶.

As has been noted by several commentators there is some debate about the full extent of the obligations on States in practice³⁷.

Nevertheless, it is clear that there is duty to co-operate with Masters of ships at sea to ensure that any persons in distress who have been rescued are allowed to disembark to a ‘place of safety’ as soon as possible, even without any documentation³⁸. As States are required to prevent any undue financial burden or delay to vessels assisting persons at sea, they should make efforts to relieve the rescuing vessel as soon as is practical.

1979, as amended, ensure that in every case a place of safety is provided within a reasonable time. The responsibility to provide a place of safety, or to ensure that a place of safety is provided, falls on the Government responsible for the SAR region in which the survivors were recovered.

Co-operation between States and Volunteer Maritime Rescuers

One additional obligation that is relevant to volunteer maritime rescuers is the requirement for co-operation between States as expressed in Chapter 3 of the SAR Convention.

This Chapter outlines that unless States have agreed otherwise, States who are party to the Convention must allow immediate entry to their territorial sea for rescue units who are acting solely for the purpose of SAR. This obligation complements the duties owed by Masters of vessels outlined above, and should also reassure would-be rescuers that they can act to aid people in distress, if it is safe for them to do so

³³ Chapter 2, International Convention on Maritime Search and Rescue
[http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Maritime-Search-and-Rescue-\(SAR\).aspx](http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Maritime-Search-and-Rescue-(SAR).aspx)

³⁴ [http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Maritime-Search-and-Rescue-\(SAR\).aspx](http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Maritime-Search-and-Rescue-(SAR).aspx)

³⁵ Annex to the 1979 SAR Convention, paragraph 1.3.2.

³⁶ International Maritime Rescue Federation.

³⁷ Jack Hatcher, ‘Entering Troubled Waters’, *The Law Society Gazette* <http://www.lawgazette.co.uk/analysis/comment-and-opinion/entering-troubled-waters/5045096.fullarticle>.

³⁸ Resolution MSC.167 (78) (paragraph 6.13 adopted in May 2004 by the Maritime Safety Committee together with the SOLAS and SAR amendments)

³⁹ Paragraph 1.3.2.

3 OBLIGATIONS UNDER INTERNATIONAL MARITIME LAW

This modus operandi of close co-operation with State authorities is exhibited by well-established civil society rescue organisations such as the Migrant Offshore Aid Station (MOAS), SeaWatch, German Maritime Search and Rescue Service (DGzRS), Hellenic Rescue Team (HRT), German Lifesaving Society (DLRG), Norwegian Society for Sea Rescue (RS), Swedish Sea Rescue Society (SSRS), Royal National Lifeboat Institution (RNLI) and the Royal Netherlands Sea Rescue Institution (KNRM), as recognised by the International Maritime Rescue Federation.

3.3 OBLIGATIONS UNDER THE INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA (SOLAS)

State obligations

Chapter 5 'Safety of Navigation' Regulation 7 'Search and Rescue Services' states:

"Each Contracting Government undertakes to ensure that the necessary arrangements are made for distress communication and co-ordination in their area of responsibility and for the rescue of persons in distress at sea around its coasts".

Further, in Regulation 33 - Distress situations: obligations and procedures, the Convention makes clear that:

"This obligation to provide assistance applies regardless of the nationality or status of such persons or the circumstances in which they are found."

In all cases it is the Master who has the discretion: Regulation 34-1 Master's discretion:

"The owner, the charterer, the company operating the ship as defined in regulation IX/1, or any other person shall not prevent or restrict the master of the ship from taking or executing any decision which, in the master's professional judgement, is necessary for safety of life at sea and protection of the marine environment."

Compliance with this obligation is essential in order to preserve the integrity of search and rescue services.

3.4 OBLIGATIONS NOT TO REFOULE

Protection against refoulement is a cornerstone of international human rights and refugee law and according to the United Nations Human Rights Committee (UNHCR) view the prohibition of refoulement is a rule of customary international law⁴¹.

There are fundamental obligations not to return persons where there are substantial grounds for believing that there is a real risk of different forms of irreparable harm, which may be derived from international human rights law. For example, Article 33(1) of the 1951 Convention relating to the Status of refugees provides:

"No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion".

Article 3(1) of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides:

"No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to **torture**".

3.5 OBLIGATIONS UNDER THE IMO GUIDELINES ON THE TREATMENT OF PERSONS RESCUED AT SEA⁴²

The IMO guidelines are clear that in respect of 'Lifesaving':

"All persons in distress at sea should be assisted without delay."



4 CONCLUSIONS



4. CONCLUSIONS

- While volunteer maritime rescuers and civil society humanitarian organisations operating in and around European waters are wise to remain aware of EU immigration legislation, it is equally important to note that there are other sources of supporting obligations originating from applicable national and international laws. There are also potential safeguards for maritime rescue activities, while the SAR Convention notably recognises the use of “public and private resources” in SAR operations which should include volunteer maritime rescuers.
- It is important to **remember** that the EU Facilitation Directive⁴³ covers a much wider range of conduct than just the rescue of persons who are in danger at sea. As a result, the fact that an explicit humanitarian exception has not been uniformly included by all EU Member States in respective national legislation should not be read as an attempt to criminalise rescuing persons in distress. Instead, the legislation must be read in the context of the wider legal framework (i.e. applicable national, international maritime, refugee and international human rights **laws**).
- The criminal law of many Member States may not only provide a defence to rescuers, but may even criminalise inaction, either through specific legislation affecting the duty to rescue at sea, or through wider obligations to rescue.
- In addition, while it is a still relatively untested option, it seems **possible** that any attempt to criminalise volunteer maritime rescuers could be challenged by a domestic court’s duty to consider and apply human rights obligations.
- Once persons have been rescued and taken on-board a vessel, there is the international law obligation not to re-outrage, and a further obligation by Masters to land persons at a ‘place of safety’.
- Finally and as noted by the International Chamber of Shipping (ICS), the rescue of all persons in distress at sea is ‘an obligation under international maritime law, as well as a humanitarian duty... Whatever may be decided by policy-makers in EU member states, the legal and humanitarian obligation of merchant ships to provide assistance to anyone in distress at sea will remain unchanged⁴⁴.’

⁴¹ <http://www.unhcr.org/4d9486929.pdf>

⁴² IMO Doc. Resolution MSC. 167(78), Annex 34, adopted by the Maritime Safety Committee on 20 May 2004.

⁴³ EU, Facilitation Directive, 2002/90/EC.

⁴⁴ Hatcher.



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6 KEEP IN CONTACT



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7 WHO WE ARE

BACKGROUND

Human Rights at Sea was established in April 2014. It was founded as an initiative to explore issues of maritime human rights development, review associated policies and legislation, and to undertake independent investigation of abuses at sea. It rapidly grew beyond all expectations and for reasons of governance it became a registered charity under the UK Charity Commission in 2015.

Today, the charity is an established, regulated and independent registered non-profit organisation based on the south coast of the United Kingdom. It undertakes **research**, **investigation** and **advocacy** specifically for human rights issues in the maritime environment, including contributing to support for the human element that underpins the global maritime and fishing industries.

The charity works internationally with all individuals, commercial and maritime community organisations that have similar objectives as ourselves, including all the principle maritime welfare organisations.

ABOUT US

Our work is about doing what is right for those who ask for our help. As such, we are strictly unbiased in our approach to pertinent issues and our interactions with governments, organisations and individuals.

We believe that there should be no reason why human rights in the maritime environment should not be expressly researched, developed and advocated for the benefit of the international community. This involves the investigation and profiling of human rights abuses in support of seafarers, fishers and their families globally, as well as the publishing of independent case studies and supporting commentary documentation.

The charity works under our Founding Principle that **“Human rights apply at sea, as equally as they do on land”** which is driven by the charity’s core values of **‘Transparency, Clarity and Accountability’**. These core values apply to everything that we do and what we stand for.

OUR CORE VALUES

TRANSPARENCY in our scope, our mission, our role and our objectives as an independent maritime human rights charity.

CLARITY in all our work, including investigations, case studies, campaigns, programmes and projects.

ACCOUNTABILITY for maritime human rights abuses by perpetrators through objective and systematic investigation.

OUR MISSION is to explicitly raise awareness, implementation and accountability of human rights provisions throughout the maritime environment, especially where they are currently absent, ignored or being abused.

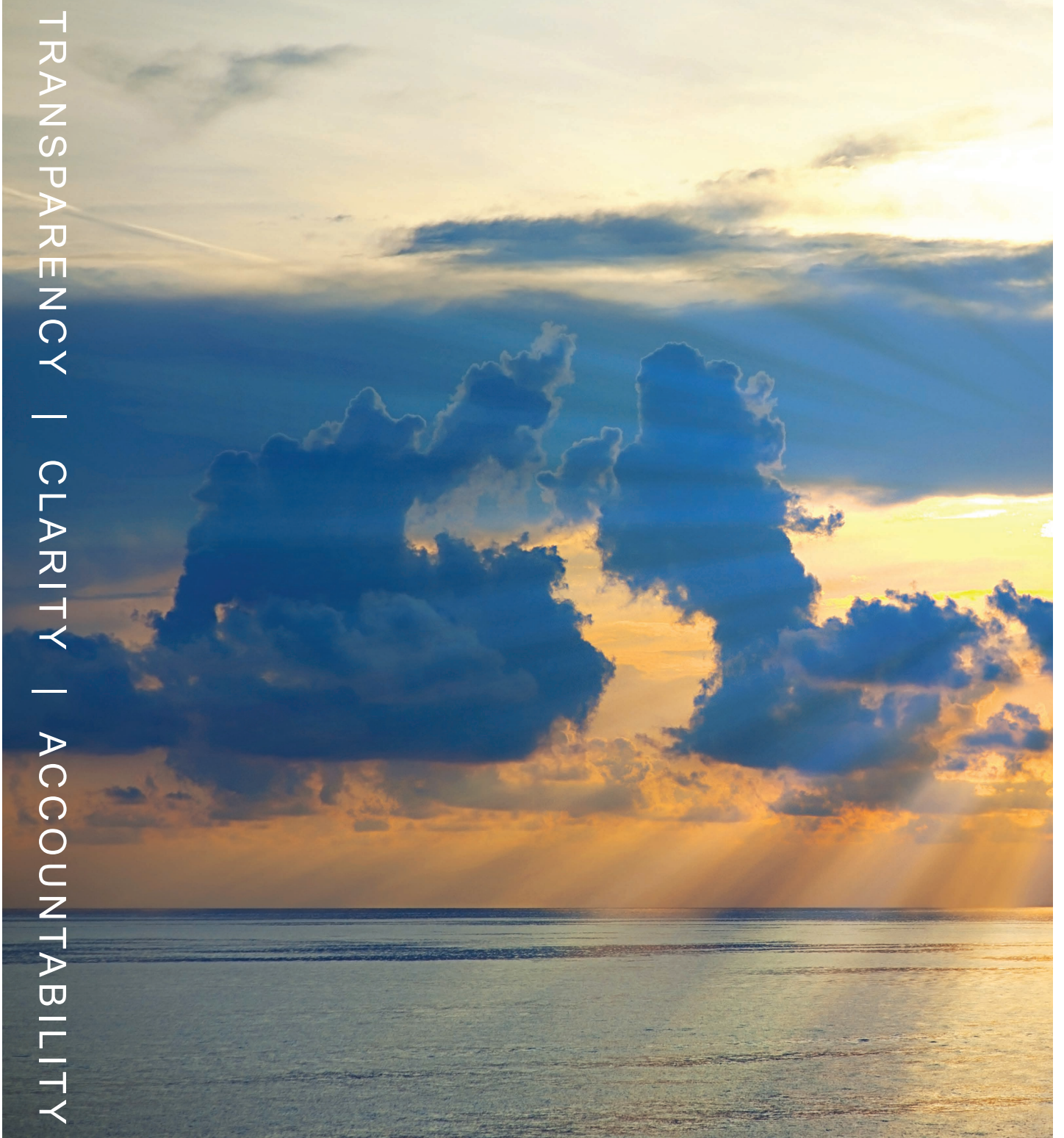
OUR VISION is to become a leading independent maritime human rights platform.

OUR CHARITABLE OBJECTIVES

To promote human rights (as set out in the Universal Declaration of Human Rights and subsequent United Nations conventions and declarations) for seafarers, fishers and others involved in working at sea throughout the world by all or any of the following charitable objectives.

- Increasing global awareness of the explicit requirement for protection of, respect for and provision of effective remedies for human rights abuses at sea through international advocacy, the publishing of case studies and where applicable, the provision of teaching materials.
- Contributing to the international development of effective, enforceable and accountable remedies for human rights abuses at sea.
- Investigating and monitoring abuses of Human Rights at Sea.
- Developing the UN Guiding Principles for Business and Human Rights in the maritime environment.
- Commenting on and supporting proposed national and international human rights legislation, policies and best practice, where applicable.

**VOLUNTEER MARITIME RESCUERS:
AWARENESS OF CRIMINALISATION**



TRANSPARENCY | CLARITY | ACCOUNTABILITY



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